APPEAL NO. 042209
FILED OCTOBER 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 5, 2004. The hearing officer determined that the appellant's (claimant) compensable injury of _____, includes depression but does not include the compression fracture at L1, injury to the cervical spine, or reflex sympathetic dystrophy (RSD). The claimant appealed the determination on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that she had sustained the injury after lifting a tub containing cucumbers and water, weighing about 50 pounds. The claimant was initially treated for a lumbar strain. On February 21, 2000, she was treated by Dr. Mc. At that time, she reported neck pain with an onset date about two weeks after the date of injury. An MRI dated February 28, 2000, finds a "mild, old fracture" at L1. Two treating doctors make references to RSD but neither provides an explanation supporting the diagnosis. An independent medical examination (IME) on December 16, 2003, found no clinical evidence of RSD. In an addendum dated May 6, 2004, the same IME doctor determined that the cervical spinal stenosis appeared to be degenerative in nature.

The issue of extent of injury presented a question of fact for the fact finder. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer noted in his Background Information section of the decision and order that the greater weight of credible evidence supports the conclusion that the fracture at L1 preexisted the compensable injury event. He also noted that the medical records indicated that the claimant had not reported a cervical injury until a month after the injury. Finally, he is persuaded by the IME that there was no clinical evidence of RSD and that the cervical problems appeared to be more degenerative in nature. Nothing in our review of the record reveals that the hearing officer's determination is so

contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Margaret Turner
Appeals Judge

_____
Edward Vilano
Appeals Judge